IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/10/2003

CORAM

THE HONOURABLE Mr. JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.19498 OF 2002
AND
CRL.M.P.No.7926 OF 2002.

Raghunath V.Nair ... Petitioner

-Vs-

State, by The Inspector of Police
J5 Shastri Nagar Police Station,
Chennai. ... Respondent

P.H.Menon
Managing Director,
M/s.Sanguino Implex Pvt.Ltd.,
No.111, Velacherry Main Road,
Chennai-600 032. ... Intervener

(Intervener brought on record
as per the Order of the Court
dated 9.9.2002 made in
Crl.M.P.No.8783/2002)

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

!For Petitioner: Mr.B.S.Raman

^For Respondent: Mr.A.N.Thambidurai
Govt.Advocate(Cri.Side)

For intervener: Mr.T.K.Rajasekaran
Mr.P.Karlmarx

:O R D E R

This Criminal Original Petition has been filed praying to call for the records on the file of the respondent J5, Sastri Bhavan Police in their Crime No.839 of 2002 and quash the same.

2.The case of the petitioner is that he is working as Branch Manager in TATA Finance limited, a reputed Non Banking Financial Institution which is engaged in the business of extending finance under Hire Purchase/Lease Scheme; that M/s Sanguino Impex P Ltd.approached TATA Finance Limited for 100% finance for being given use of a Ford Escort Car under a lease agreement and a lease agreement was entered into between TATA Finance limited and M/s Sanguino Impex P. Ltd. on 12.5.1999 and a new Ford Car was purchased by Tata Finance limited for a sum of Rs.7,59,988/- and given for the use of M/s Sanguino Impex P.Ltd.; that as per the terms and conditions of the agreement between the parties, the lease was for a period of 60 months commencing from 12.3.199 9 to 12.4.2004; that the lessee was liable to pay a sum of Rs.18,170/- per month for the first 59 months and Rs.17,792.79 for the 60th month as lease rental every month to have the use of the car; that the agreement in Clause 23 provides refers the TATA Finance Limited as owner of the vehicle which has been given for the use of the lessee under the agreement, being entitled to repossess the same in the event of the lessee defaulting in payment of dues; that as provided in the agreement, the 1999 Model Ford Escort Car was registered in the name of M/s.Sanguino Impex Private Limited with Registration No.PY-01-M-19 60; that the said M/s.Sanguino Impex Private limited committed a series of defaults and failed to pay the monthly lease instalments; that various cheques issued by them got dishonoured when presented for payment; that the Head Office of TATA Finance Limited at Mumbai put M/ s.Sanguino Impex Private Limited on notice by letter dated 18.6.2002 that the lessee was in default in payment of dues, and if the dues were not cleared promptly, the said company would be forced to act under the terms of the agreement; that following the lessees failure to take any step to clear the dues, the Head Office TATA Finance Limited at Mumbai authorised the repossession of the leased vehicle and it was repossessed on 18.7.2002; that as on the date of repossession, four monthly instalments viz. 12.4.2002 to 12.7.2002 remained unpaid with default interest; that the repossession has been intimated to the police authorities on the same day.

3. The further case of the petitioner is that the car was being driven by one Mr.P.H.Menon, a Director in M/s.Sanguino Impex Private Limited at the time of its being repossessed on 18.7.2002, who is well aware of the fact of non-payment of dues; that the said Mr.P.H.Menon gave a false complaint on 19.7.2002 alleging that on 18.7.2002 in the morning, when he was proceeding from his resident to his office, the petitioner, one Ravi and two unnamed others stopped his car and the petitioner abused the informant; that it is al leged that certain valuables including Rs.16,000/- in cash is said to be kept by him in the car and he has requested that the car and his properties may be restored to him; that the respondent police have registered a case against the petitioner herein under Sections 395 and 506(II) IPC; that the informant added his name to the list of accused with a view to harass him as he is the Branch Manager of TATA Finance Limited; that the petitioner is a responsible officer in a reputed company and he has been falsely implicated in the FIR for collateral reasons of the informant trying to bargain favourable terms with the company. Hence, the above Criminal Original petition has been filed for the relief extracted supra.

4. During arguments, the learned counsel appearing on behalf

of the petitioner, besides reiterating the facts as pleaded in the above criminal original petition, would also cite the following judgments:

1) 2001(4)CTC 102 (CHARANJIT SINGH CHADHA AND OTHERS vs. SUDHIR MEHRA)
2) 1996 SCC (Cri) 281 (K.A.MATHAI ALIAS BABU AND ANOTHER vs. KORA BIBBIKUTTY AND ANOTHER)
3) 1979 SCC (Cri) 987 (SARDAR TRILOK SINGH AND OTHERS vs. SATYA DEO TRIPATHI)

5. In the first judgment cited above, in a case of hire purchase agreement containing a clause empowering the owner to repossess the vehicle in case of default by hirer and on the hirer committing default, the owner repossessed the vehicle in which the Honourable Apex Court has held:

"The hire-purchase agreement in law is an executory contract of sale and confers no right in rem on hirer until the conditions for transfer of the property to him have been fulfilled. Therefore, the repossession of goods as per the term of the agreement may not amount to any criminal offence. The agreement specifically gave authority to the appellants to re-possess the vehicle and their agents have been given the right to enter any property or building wherein the motor vehicle was likely to be kept. Under the hire purchase agreement, the appellants have continued to be the owners of the vehicle and even if the entire allegations against them are taken as true, no offence was made out against them .... The complaint and any other proceedings initiated pursuant to such complaint are quashed."

6. In the second judgment cited above, in a case where a bus purchased by A.2 under a hire-purchase agreement was sold to the complainant and when the complainant defaulted in payment of instalment to the financier, the financier took possession of the bus with the help of A.1 and A.2 and in this case, the Honourable apex Court held:

"Financer has right to resume possession even if the agreement does not contain a clause of resumption of possession and the offence of theft not made out."

7. In the third judgment cited above, in a case wherein the truck sold under hire-purchase agreement was seized by the financier on default in payment of instalment and buyer launched criminal prosecution in which the Honourable Apex Court held:

"The launching of criminal prosecution by the buyer was an abuse of process of the court since the dispute was essentially of a civil nature."

Citing the above judgments, the learned counsel for the petitioner would pray to the relief extracted supra.

8. On the contrary, on behalf of the intervener/defactocomplainant, the learned counsel would submit that so far 40 monthly instalments have been paid out of sixty instalments and due to three months' paltry random default, the petitioner has foreclosed the agreement and tried to re-possess the car that too by force; that on the fateful day i.e. on 18.7.2002, at around 10.45 a.m., the petitioner along with three other men

came in a black Ambassador car and waylaid the defacto-complainant near Theosophical Society, Besant Avenue Road, Adyar, chennai and the petitioner along with one Ravi and other persons pulled the defacto-complainant out of his car forcibly and slugged on his neck, shoulder, stomach with enormous force and scolded him in filthy language at the instance of the petitioner. The learned counsel would further submit that the accused persons have also robbed the following items from the defacto-complainant:

1.Samsung Stereo C.D.changer (Home Theatre)
2.Oriental Bank of Commerce Cheque Book
3.Standard Chartered Bank Cheque Book
4.ICICI Bank cheque book
5.Standard Chartered Bank ATM Card
6.ICICI Bank ATM Card
7.Americal Express Credit Card
8.Office Bag containing files
9.Cash of Rs.15,000/= in office bag and Rs.1,500/- in purse.
10.House Keys bunch
11.Office Keys bunch
12.Nokia Battery Charger
13.Nokia Cell
14.Bible and other Misc.items
15.Company Rubber Stamps.

9. The learned counsel for the intervener would further submit that scores of rulings hold that an FIR, even concise in nature ,shall not be quashed by the High Courts exercising jurisdiction under Section 482 of the Code of Criminal Procedure, if Courts are of the view that a prima facie offence is made out and it is the trial Court which ought to decide the same; that in UNION OF INDIA vs. BAJANLAL reported in AIR 1992 SC 604, the Honourable Apex Court has held that `the Courts have to order for an investigation under Section 156 Cr.P.C., if the allegations in the FIR and other materials accompanying FIR discloses commission of cognizable offence'; that since in the case hand, the FIR discloses a cognizable offence, the question of quashing the same does not at all arise and would pray to dismiss the above criminal original petition.

10. On the part of the respondent Police, the learned Government Advocate on the criminal side would submit that based on the complaint lodged by the intervener/defacto-complainant, the respondent Police having registered the case, are proceeding with the investigation and therefore would pray to dismiss the above criminal original petition thus permitting the Investigating Officer to have a free and fair investigation in the matter.

11. In consideration of the materials placed on record and upon hearing the learned counsel for all the parties, the petitioner's financier company is alleged to have made financial assistance to the defacto-complainant to purchase a car on certain terms and conditions and the mode of repayment etc. On the part of the petitioner, it would further be submitted that there are conditional clauses inserted in the agreement to the

effect that in case of default in the repayment, the financier would become the owner of the vehicle further becoming entitled to possession of the same and giving effect to the said clause, since the defacto-complainant committed the default in the payment, they have taken possession of the vehicle.

12. On the part of the defacto-complainant, it would be submitted that till date forty instalments have been paid without any default and due to some financial constraints, he could not make the payment only for the last three instalments and in such circumstances, the petitioner along with one Ravi and engaging some unruly elements not only waylaid the vehicle, but also assaulted him and took the vehicle and the accused have also robbed of his articles and cash as a result of which, for his personal sufferings of assault and for the acts perpetrated in deliberately snatching not only the vehicle from out of his possession but also his valuable articles, engaging unruly elements, he has given a complaint before the respondent police within whose jurisdiction the vehicle had been snatched.

13. In the above circumstances, the points for determination are

1.`whether the registering of the case by the respondent Police on the complaint of the defacto-complainant is just and proper or whether the same has to be quashed as it is sought for on the part of the petitioner?'

2.`whether pursuant to this dispute, the act admittedly perpetrated on the part of the petitioner and other accused in taking forcible possession of the vehicle and other valuable articles from the defactocomplainant, is just or proper and whether the same could be ratified by the Court or whether the petitioner and other accused persons become liable to be dealt with in accordance with the penal provisions of law?'

14. It may be the case of the petitioner finance company that there was a written agreement entered into in between themselves and the defacto-complainant, according to which if there are defaults in the repayment of schedule agreed upon, the petitioner's finance company would not only become the full-fledged owner of the vehicle but also would become entitled to get possession of the same. But, when the defacto-complainant submits that he already paid forty instalments, even though he agrees to the terms and conditions of agreement, is it proper on the part of the petitioner's finance company to have acted in the manner alleged in taking forcible possession of not only the vehicle, which is subject to the agreement but also the other valuable articles mentioned in the complaint.

15. Needless to mention that we are in a society governed by laws and for any claim made, only the proper forums established by law should be resorted to for remedy and the rule being that in matters of such nature, since there is a dispute between the parties, it would have been only appropriate on the part of the petitioner's finance company to have initiated civil proceedings either for the recovery of the money or for taking possession of the vehicle as it is alleged to have been contemplated in the agreement and in such cases, the decision of the civil Court will be final.

16. Even regarding taking possession of the vehicle, it is the same civil court which could make an order and the rule in this regard is except by due process of law and by the procedures established by law, by no other means, parties could take it for granted that they could take the law into their own hands and do things accordingly laying emphasis on the terms of agreement entered into by parties particularly when a major compliance of the same is claimed by the other side and therefore the manner in which the petitioner and other accused have acted in deliberately taking possession of not only the said vehicle but other valuable articles further assaulting the defactocomplainant is undoubtedly illegal and the respondent police are perfectly right in registering the case on the complaint of the defactocomplainant further taking up the same for investigation.

17. It is not only the vehicle which is focussed on the part of the petitioner herein which is said to be under the lease agreement but also 15 items of articles have been specifically mentioned in the complaint by the intervener to have been robbed from him besides being assaulted black and blue until he fell in giddiness and ultimately two unknown persons who witnessed the entire scene which occurred in the street have put the complainant into an auto and sent him resulting in the complainant taking treatment in a private nursing home besides suffering physical and mental sufferings, agony and affliction.

18. In the whole of the act perpetrated on the part of the accused named in the complaint, the act of seizing of the vehicle which is focussed in the petition becomes eclipsed in view of the alleged commission of greater criminal offences such as assault, robbery, criminal intimidation etc. and this Court is not able to find reasons in the manner in which the above criminal original petition has been filed on the part of the petitioner who is one of the accused as though the seizure of the vehicle in question was a smooth transaction and nothing else had happened and hence needless to again point out that the gruesome act alleged to have been perpetrated in the middle of the street as an ambush engaging unruly elements, harping on the complainant and unleashing all methods of criminal activities thus taking the law into their own hands, have culminated not only in the lodging of the complaint by the complainant but also registering the case based on the complaint by the intervener in the respondent's Cr.No.839 of 2002 for the commission of the offences punishable under Sections 395 and 506(II) IPC. While such being the facts and circumstances encircling the case registered by the respondent against the accused therein, the petitioner, as though nothing had happened and burking all those facts regarding the perpetration of the crime, as alleged in the complaint, without even offering any explanation, only alleging that it is a false complaint, has come forward to pray to quash the same which cannot be done in law.

19. So far as the judgments cited on behalf of the second petitioner/financier are concerned, in the first judgment cited above, it had been brought to the notice of the Honourable Supreme Court that the cheque issued by the hirer for a sum of Rs.84,000/= was dishonoured by the bank and the financier had filed a criminal complaint under Section 138 of the Negotiable Instruments Act wherein the Honourable Apex Court being convinced

of the default committed by the hirer has rightly held that there had been no element of theft or dishonest intention either for wrongful gains for themselves or to cause wrongful loss to the hirer since the dishonest intention which is essential element to constitute an offence of theft cannot be attributed to a person exercising his right under the agreement of default of payment and therefore since the financier continued to be the owner of the vehicle and in right exercise of his authority to repossess the vehicle under the hire purchase agreement he has taken the vehicle, no offence of theft could be contemplated against him.

20. But, this position as found by the Honourable Apex Court in the said judgments is not prevalent in the case in hand since primarily on the part of the petitioner's finance company, no evidence has been placed in a reliable manner that they have at least issued a notice to the defacto-complainant nor indicating anywhere that he is in default or in arrears of payment of the monthly instalments. While such being the factual position of the case, the propositions held by the Honourable Apex Court in the second and third judgments cited above also do not become applicable to the case in hand, which has to be dealt with on different parlance.

21. In the above circumstances, yet another important aspect awaiting vital consideration in the case in hand is that it is not only the vehicle but also the other articles, as mentioned in the complaint of the defacto-complainant, have been taken forcible possession of by the accused for which the petitioner's finance company has absolutely no right or authorisation in any manner and it is not only a frontal illegality but also an atrocious act committed on the part of the accused taking the law into their own hands.

22. Therefore, though this Court is in perfect agreement of the propositions held by the Honourable Apex Court in the judgments cited above, still, the facts and circumstances encircling the case in hand are entirely different in the sense that most part of the instalments have been paid by the defacto-complainant. Therefore, the only conclusion that could be arrived at regarding the claim of the petitioner's company is that the dispute has to be resolved by the Court of original civil jurisdiction without which the petitioner's company cannot indulge in such acts as it had perpetrated on the date of occurrence in forcibly taking possession of not only the vehicle but also the other articles of the defacto-complainant which are lawfully belonging him over which admittedly the petitioner's finance company does not have any right and hence it is only proper on the part of the police to register the case and investigate in order to give a disposal to the complaint of the defacto-complainant. In these circumstances, the legal propositions validly held by the Honourable Supreme Court , cannot, in any manner be applied to the facts of the case in hand.

23. In fact, the criminal complaint lodged and the case registered by the respondent Police deserves a thorough investigation to be held following all such procedures as laid down under the Code of Criminal Procedure.

24. In the recent judgment of the Honourable Apex Court delivered in UNION OF INDIA vs. PRAKASH P.HINDUJA AND ANOTHER reported in IV (20 03) Supreme Laws Today 335, the Honourable Apex Court, considering the point that `whether the High Court can exercise its inherent powers under Section 482 of the Code of Criminal Procedure in a matter where the investigation is pending', following the earlier decisions reported in (1) AIR 1945 PC 18 (EMPEROR vs. NAZIR AHMAD), (2) AIR 1963 SC 447 (STATE OF WEST BENGAL vs. S.N.BASAK) (3)AIR 1963 SC 117 (ABHINANDAN JHA AND OTHERS vs. DINESH MISHRA), and (4) 1980 (1) SCC 554 (STATE OF BIHAR AND ANOTHER vs. JAC SALDANHA AND OTHERS) has held:

"... the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer-in-charge of police station in Court under Section 173(2) Cr.P.C., this field being exclusively reserved for the Investigating Agency."

25. Since in the case in hand also, it is reported that the investigation is pending, the proposition held by the Honourable Apex Court would squarely become applicable to the case in hand. Both the points framed above are answered against the petitioner and the above criminal original petition becomes liable only to be dismissed.

26. For all the discussions held, the only conclusion that this Court could arrive at in the facts and circumstances of the case connected to the above criminal original petition is to dismiss the above criminal original petition as devoid of merits.
In result, the above criminal original petition is dismissed.

Consequently, Crl.M.P.No.7926 of 2002 is also dismissed.

Index: Yes
Internet: Yes
vjy/Rao

To

1.The IX Metropolitan Magistrate,
Saidapet, Chennai-15.

2.The Inspector of Police,
J5 Shastri Nagar Police Station,
Chennai.

3.The Public Prosecutor,
High Court, Madras.